

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

BETTY LOU GIBSON)	
Claimant)	
VS.)	
)	
BEECH AIRCRAFT CORPORATION)	Docket No. 162,835
Respondent)	
Self-Insured)	
AND)	
)	
WORKERS COMPENSATION FUND)	

ORDER

Respondent requested review of the preliminary hearing Order dated December 9, 1996, entered by Administrative Law Judge Nelsonna Potts Barnes.

ISSUES

The Administrative Law Judge granted claimant's request and authorized Dr. John Regan of the Texas Back Institute in Plano, Texas, to operate upon and otherwise treat claimant's back. Respondent requested the Appeals Board to review the issue of whether the Administrative Law Judge exceeded her jurisdiction and authority in appointing Dr. Regan the authorized physician.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, for preliminary hearing purposes the Appeals Board finds as follows:

This review should be dismissed because the Appeals Board does not have jurisdiction to review the issues presented by the respondent.

Claimant has undergone five hip and four back surgeries. The Administrative Law Judge found that claimant now requires a fifth back surgery which requires special expertise due to its complexities.

At the preliminary hearing respondent argued that Dr. Regan should not be appointed because he was located outside the state of Kansas. The Appeals Board finds that the Workers Compensation Act does not provide such restriction. The Act gives administrative law judges discretion in assuring that injured workers are provided appropriate treatment. The location of a health care provider is only one of the many factors a judge should consider. The complexity of a recommended surgery and the health care provider's expertise are also factors that should be considered.

In its brief the respondent argued that the Administrative Law Judge erred by not allowing the respondent an opportunity to submit to claimant the names of three health care providers from which to select an authorized provider. Because that was neither requested nor raised as an issue before the Administrative Law Judge, it may not be addressed for the first time on this review. K.S.A. 1996 Supp. 44-555c limits Appeals Board review to those questions of law and fact presented to the administrative law judge. Such a limitation is reasonable as it affords the parties an opportunity to present evidence relevant to the issues before the administrative law judge.

Because the Administrative Law Judge did not exceed her jurisdiction and authority by appointing Dr. Regan as the authorized treating physician, the Appeals Board does not have jurisdiction to review this preliminary hearing Order.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that this review should be, and hereby is, dismissed.

IT IS SO ORDERED.

Dated this ____ day of February 1997.

BOARD MEMBER

c: James A. Cline, Wichita, KS
Terry J. Torline, Wichita, KS
Steven L. Foulston, Wichita, KS
Nelsonna Potts Barnes, Administrative Law Judge
Philip S. Harness, Director